



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/671,059

09/25/2003

Kyle N. Patrick

CA920020057US1

5839

32329 7590 06/29/2009
IBM CORPORATION
INTELLECTUAL PROPERTY LAW
11501 BURNET ROAD
AUSTIN, TX 78758

EXAMINER

KEEFER, MICHAEL E

ART UNIT

PAPER NUMBER

2454

MAIL DATE

DELIVERY MODE

06/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: KYLE N. PATRICK

Application No. 10/671,059
Technology Center 2400

Mailed: June 29, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on October 15, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, APPEALED CLAIMS

Appellants have not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1-30. The rejected claims that have not been appealed and/or argued for appeal are claims 1-5, 7, 9, 11-30.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 7, Sept 2008).

POWER OF ATTORNEY

Appellants filed a Power of Attorney dated March 4, 2009. There is no indication on the record that the Examiner has considered the above Power of Attorney.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) either enter a paper or have appellant enter a paper canceling claims 1-5, 7, 9, 11-30 and rewriting claims 6, and 8-10 in independent form;
 - 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims;
 - 3) consider the Power of Attorney filed March 4, 2009 as required;
- and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

dms/cdc

IBM CORPORATION (VE)
C/O VOLEL EMILE
P. O. BOX 162485
AUSTIN TX 78716